March 25, 2005

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Regulation Z, Docket No. R-1217, Truth in Lending
Review of Credit Cards and Other Open-End Credit Plans

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to submit comments on the Federal Reserve's review of disclosures and consumer protections under the Truth-in-Lending Act and Regulation Z. The ICBA commends the Federal Reserve for undertaking a comprehensive review of consumer lending rules, and looks forward to working closely with the Federal Reserve to ensure that disclosures provide meaningful information for customers while helping to eliminate burdensome and costly elements of the current process. The ICBA believes this review is especially timely since the federal banking agencies are reviewing all regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) to identify outdated, unnecessary, or unduly burdensome regulatory requirements. Consumers and bankers find the current disclosure regime unduly complicated. Therefore, it is appropriate that the Federal Reserve begin to take steps to alleviate

[1]The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 17,000 locations nationwide and employing over 260,000 Americans, ICBA members hold more than $631 billion in insured deposits, $778 billion in assets and more than $493 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.
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unnecessary burden for banks, eliminate "information overload," and create a revised disclosure regime that provides meaningful information for consumers.

Summary of ICBA Comments

The ICBA agrees with the Federal Reserve's phased approach to reviewing the disclosures under Regulation Z and TILA, beginning with credit cards. While the ICBA agrees that it is useful for the Federal Reserve to provide guidance on the format for disclosures, we disagree that specific mandates should be required; instead, individual creditors should be permitted some flexibility to provide disclosures in the manner that best meets the needs of their own customers and their particular market. However, presenting disclosures in a simple format, such as the existing box or table format, makes it easy for consumers to understand the basic terms and fees associated with a credit card account and also facilitate comparison of terms for consumers that want to do so.

The ICBA believes that additional clarity is needed for what fees constitute the finance charge, especially since the finance charge is key to other calculations and disclosures under the regulation. The ICBA believes that a simple approach to classification of charges as part of the finance charge is preferable to avoid confusion and misunderstanding, and recommends that the finance charge be limited to fees assessed by the creditor as a cost of borrowing funds. Fees that are the result of some event, such as a late payment, that is fundamentally outside the creditor's control should not be included within the definition.

Additional guidance on disclosures, such as those regarding over-limit fees, can be useful. The ICBA encourages the Federal Reserve to regularly update model disclosures. Model disclosures are particularly helpful for smaller credit card issuers with limited resources. However, it is equally important that model disclosures be developed after consultation with focus groups of representative consumers to ensure that the disclosures achieve their intended goals and can be easily understood. Creditors that make use of any model disclosures should be granted a safe harbor from liability.

The ICBA does not believe that the historical APR provides meaningful information for consumers, but is a costly calculation that drives up the cost of credit for all consumers and should probably be eliminated. The ICBA does find, though, that consumers should rely on information presented in the credit card account agreement for information about how the account operates, such as what events will trigger an increase in rates. It would be a mistake to try to provide information about the account operation on the periodic statement, since that expands the amount of information included on the periodic statement and becomes the kind of "information overload" that defeats the purpose of disclosures. Attempting to include too much information on a periodic statement forces the periodic statement to serve a purpose beyond that for which it is intended. Rather, the periodic statement should be limited to transactions and fees incurred during the statement cycle.

The ICBA strongly encourages the Federal Reserve to work with representative consumers chosen from the general population to assess which disclosures are important and how best to convey that information. Disclosures should be simple and straightforward, and if industry experts and attorneys have difficulty interpreting particular disclosures, then the average consumer is unlikely to understand the information. Complex disclosures with too much "legalese" that may be technically accurate ultimately defeat the fundamental purpose of credit card account disclosures.

Background

The Federal Reserve periodically reviews its regulations to ensure they function appropriately. For the first time since 1980, the Federal Reserve is undertaking a comprehensive review of Regulation Z, the rule that implements the Truth-in-Lending Act (TILA). Generally, TILA is designed to provide information to consumers in a meaningful way that allows them to shop for credit.

To manage the review process, the Federal Reserve intends to conduct the review in steps. This first phase is a review of the rules on open-end credit plans not secured by a borrower's residence, primarily credit cards accounts. The Federal Reserve is especially interested in feedback on this topic because there have been substantial changes in the credit card industry in recent years: more consumers hold credit cards; the cards are used much more widely; and pricing for card usage has become increasingly complex. The current review will focus on three broad areas: disclosure format, disclosure content and consumer protections.

Scope of the Review

Question 1. As noted, the Federal Reserve plans to review Regulation Z in stages, beginning with credit cards. Because the Truth-in-Lending rules cover such a broad range of products, the ICBA agrees that a review of consumer lending disclosures is best conducted in phases. To begin with, it will allow the Federal Reserve to better manage the process. Second, the ICBA believes that it will help focus discussion and analysis. Because different consumer loan products present different goals and different concerns for both lenders and consumers, such a review may lead to the conclusion that it would be more logical to create separate disclosure regimes based on product, rather than trying to continue a one-size-fits-all approach for all consumer loan products. For example, it may be more appropriate to establish separate and distinct rules for credit cards apart from other types of consumer loan products.

As the Federal Reserve moves forward with this analysis, the ICBA believes that it is fundamentally important that focus-group meetings be held with both lenders and consumers. One of the problems with the entire disclosure format used today is that the disclosures were designed by lawyers to meet legal requirements. As a result, while the disclosures may meet legal standards, there is nothing to verify that they meet the needs of actual consumers. Therefore, focus groups should be held with representative consumers chosen from the general population at large and not representatives from any particular interest group to ensure that any changes in disclosure format or content meet the demands and needs of actual consumers.

Key Disclosures. Recently, disclosures provided to consumers have been criticized as too extensive, such that it leads to "information overload." ICBA members believe that certain elements can be segregated as the most important pieces of information that consumers desire when applying for a credit card. These are the simple interest rate associated with the product, the annual percentage rate (APR), and fees associated with the card such as the annual fee or late fee. Other important elements of information are the credit limit on the card, the grace period for payments before a finance charge applies, charge back rights if a transaction is disputed, and events that trigger a default.

Format of Disclosures

Questions 2 through 4, Disclosure Format. Many have suggested that the best way to provide information is in a box format. Although this limits the amount of information that can be provided, it also makes it easier for consumers to compare terms and conditions.

The ICBA agrees that the box format is perhaps the best way to communicate information to consumers. Similar to the nutrition labels on food items, the box format is a standardized disclosure format that allows consumers to quickly locate those elements of information that are most important and that are of greatest interest. Consumers are increasingly familiar with the box format of disclosure and a box or table also tends to draw attention to the most important terms and conditions associated with a credit card. A standardized format also allows consumers to compare credit offers. And, a box format also provides a summary of key provisions associated with a credit card for handy future reference.

Specific Standards. Last year, the Fed proposed outlining requirements for disclosures to ensure that they were "clear and conspicuous." For example, the proposal would have specified minimum font size, urged the use of simple language, graphics that would set off key terms and conditions, and the use of headers.

The ICBA believes that guidance for disclosures can be helpful. For example, using the same format and layout would help the reader understand and compare terms. Second, standardized formats facilitate comparison-shopping. However, if too much information is highlighted, consumers will ignore the disclosures. Therefore, it is important to establish the proper balance between information provided and amount of information.

While the box format is a good "specific standard" because it helps simplify the disclosure process, the ICBA also believes that lenders must be allowed some flexibility. Mandating specific fonts and graphics may not be appropriate and may, in fact, be counter-productive. More important, the disclosures that are currently required have been the subject of court decisions and judicial interpretation over a number of years, and the ICBA cautions the Federal Reserve against departing from existing requirements without carefully taking into account many years of legal precedent. If new disclosure

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formats are adopted or recommended, it is important that a clearly established safe harbor be incorporated so that any lender that adheres to any new standards does not have those disclosures second guessed by plaintiffs' attorneys.

Additionally, if the Federal Reserve makes fundamental changes to the format for credit card disclosures, it must recognize the burden that this will have on the industry. Therefore, if there are fundamental changes to the current disclosure regime, the industry must be given ample time for transition.

Account Opening Disclosures

The Federal Reserve wants to ensure that disclosures are made in a way that informs consumers, that is presented in a meaningful format, and that provides consumers with appropriate information but that does not result in unnecessary burden for creditors or "information overload" for consumers.

Question 3. Because of the volume of credit card solicitations, some consumers may want to refer to account disclosures after an account has been opened to compare a subsequent offer from a different creditor. The ICBA agrees that formats such as the table of contents or executive summary offer a great deal of merit. However, the ICBA also believes that it is important to raise the question that if a summary is sufficient to convey the necessary information, then a more detailed explanation may or may not be necessary. The ICBA believes that this is one element that should be explored during focus groups with representative consumers. The Federal Reserve should consider that, since the industry and consumers are already familiar with the Schumer Box disclosures for most consumer loans, the Schumer Box might be adapted to serve the purpose of the executive summary without creating a separate executive summary as an additional disclosure.

Questions 5 and 6. Grouping of Disclosures. The ICBA believes that it is worth exploring the concept of grouping certain types of disclosures. There is a logical appeal to grouping certain fees, such as late fees and over-limit fees, for ease of reference. However, the ICBA does not have any specific recommendations for how certain fees should be grouped, and believes that this is the type of analysis and study that can be best accomplished through focus groups with interested consumers.

At the same time, any changes to existing format and disclosure groupings will likely entail a great deal of cost and burden. Therefore, the ICBA also believes that it is equally important to consult with industry representatives, especially software providers, to assess the costs associated with any such changes. The costs of redesigning and reformatting existing disclosures may far outweigh the benefits, but it is certainly a concept worth exploring. However, without a more specific proposal, it is difficult to assess the potential costs of such changes in the abstract.

Question 7. The Schumer Box. Currently, credit card solicitations and applications include what is called the "Schumer Box." The box outlines the basic elements of a credit card account, such as the annual percentage rate (APR), annual fee (if any), and grace period for payments.

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As noted above, the ICBA believes that the box format is an effective means to communicate information to consumers. The box format is easy to read, highlights the information that consumers want most, and provides a minimum amount of important account information in a highly accessible and standardized format.

Question 8. Balance Transfer Fees and Cash Advance Fees. Under the current rules, some items *may* be included, such as balance transfer fees and cash advance fees.

Generally, the ICBA believes that the more standardized the disclosure format, the easier it will be for consumers to compare different products. Standardized disclosure formats also demonstrate the competitive advantages of one credit card over another. However, while balance transfer fees and cash advance fees are currently widely used, the competitive nature of the credit card business and the constantly changing features associated with different credit cards in such a dynamic marketplace also indicate the dangers of mandating that certain specific fees be disclosed in the Schumer Box.

For example, at one time, most credit card accounts carried an annual fee. As competition increased, many credit card companies discontinued the annual fee and therefore the disclosure box often features a zero. Therefore, the ICBA believes that sufficient flexibility needs to be incorporated into any regulation to allow for developments in the marketplace. Perhaps one approach might be to provide that the Schumer box must disclose in a table format all fees and charges regularly assessed on the standard credit card account. Optional fees or fees that do not necessarily apply to the standard account, such as late fees or over-limit fees, might be disclosed in a supplemental box or at the end of the standard box. To ensure disclosures are standardized, the Federal Reserve could establish a hierarchy for the listing of such fees. Consumer focus groups and industry representatives, though, should review any such changes to the disclosure format. An important element of any such surveys should assess whether there are other particular fees that should be included every time, included at the option of the lender, or excluded.

Questions 10 through 12. Model Disclosures. The ICBA believes that model disclosure forms are very useful. First, for smaller institutions with limited resources, the model forms provide guidance on the how the disclosures should be provided for consumers. Second, use of the model disclosures also provides lenders with a safe harbor from potential liability, and it is important that any revisions to the disclosures continue such a safe harbor.

The ICBA encourages the Federal Reserve to continue to provide and regularly update the model disclosures included with the regulation. Because the market for credit card accounts is dynamic and rapidly changing, it is important that the Federal Reserve regularly keep the model formats up-to-date. Possibly more important, though, is the need to ensure that model disclosures are readily comprehensible to consumers and that the model disclosures provide information in a way that facilitates comparison-shopping by consumers. This is one area where focus group sessions and surveys of actual consumers and industry representatives can provide valuable information to develop meaningful and readily comprehensible disclosures.

Content of Disclosures

Classification of Fees and Charges

Currently, finance charges must be disclosed and labeled as a finance charge.[2] "Other" charges must also be disclosed, but there is no specific standard for labeling "other" charges, and yet fee income from over-limit fees and other non-finance charge fees has increased substantially in recent years.

Question 13. Clarity for Characterizing Fees. Over the years, one problem confronted by lenders is whether or not a particular fee is actually a finance charge. While characterizing a fee as a finance charge may be straightforward in theory, lenders – and examiners – often encounter difficulties in being able to determine with sufficient certainty that a particular fee is, in fact, a finance charge. This has been a constant source of frustration, especially since the finance charge is used to calculate the APR.

The ICBA believes that the definition of the finance charge should be limited to those fees that are associated with the cost of the credit *imposed by the lender as a condition for borrowing the funds* and regularly associated with the account. The finance charge should *not* include fees not initiated by the lender. For example, a late fee or over-limit fee is actually caused by an action on the part of the borrower. Absent some action (or inaction) by the borrower, the fee is not assessed. Therefore, since the fee is "initiated" by the borrower, it should not be considered a finance charge.

Fundamentally, though, it is important that a simple rule for classifying charges as finance charges or other charges should be developed. The rule should be readily understood by bankers, examiners, and – most important – by consumers.

Question 14. How Consumers Are Informed About Fees. Generally, consumers are informed about fees through the account agreement. This might be one area where bold or italicized paragraph headings could help identify specific fees for easy reference.

Question 15. Usefulness of the term "Finance Charge." Some have suggested that the term finance charge is not particularly useful or well understood by consumers or bankers. Generally, the ICBA believes that the term "finance charge" is useful, but because there is confusion about which fees are included or excluded, the scope of the term finance charge has become somewhat muddied. Therefore, the ICBA recommends that a definition be established that is easily applied, as suggested above. If the term

[2] A finance charge is defined as "the cost of consumer credit as a dollar amount." According to the existing definition, "it includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." However, it is not always clear whether a particular fee or charge may be classified as a finance charge.

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"finance charge" is clarified by restricting it to charges and fees imposed directly by the lender as a cost of borrowing the funds, and other fees such as those not imposed directly by the lender or that are triggered due to an action by the borrower are excluded, it will simplify and clarify understanding. A simple definition will alleviate problems, recognizing that the information can be provided in a meaningful way to educate consumers without trying to force the finance charge to do more than it was intended to do. The importance is providing transparency for consumers on the costs associated with an account, and forcing too many incidentals into the finance charge only causes confusion. Moreover, forcing too many incidental charges into the finance charge makes it increasingly difficult for consumers to compare accounts. The simpler the calculation of the finance charge, the easier it will be for consumers to compare accounts.

Question 16. Excluding "Optional" Charges from the Finance Charge. As noted above, the ICBA believes that this might be a meaningful approach to characterizing the finance charge and eliminating some of the existing confusion about whether certain fees are covered by the definition.

Question 17. Classifying a Fee as a Finance Charge if it Affects the Amount of Credit Available. The ICBA does not believe that classifying a fee as a finance charge if it affects the amount of credit available is a useful distinction. Fundamentally, the finance charge is a cost of borrowing the funds imposed by the creditor. It confuses the issue to associate the finance charge with the amount of funds available. While there may be differential rates associated with the amount of credit available, then it is the rate difference that is the defining distinction, not the amount of credit available.

Question 18. Identification of "Other Charges." As noted above, the ICBA believes that the classification of a charge or fee as a finance charge should focus on whether the fee is one imposed by the lender as a cost of borrowing the funds. Any charges that are not a cost of borrowing the funds would then logically be classified as "other" charges.

Question 20. The Importance of Using Similar Classifications for Open-End and Closed-End Credit Accounts. The ICBA believes that, as a general rule, it is preferable to use standard definitions where possible. Having consistent meanings for similar applications helps eliminate confusion among consumers, bankers and examiners. The ICBA also believes that the approach recommended above might be a useful means to distinguish finance charges and other charges. While the rules apply to a broad variety of credit products, absent a compelling reason to define the same term differently for different applications, using a consistent definition or classification for a charge can help consumers understand credit.

Exceeding Established Account Limits

Question 21. Guidance on the Definition of Over-Limit Fees. Currently, the Federal Reserve offers guidance on what constitutes a late fee in the official staff commentary to Regulation Z. The ICBA believes it might be helpful to incorporate similar guidance for classifying a fee as an over-limit fee, i.e., a fee charged for exceeding an established credit limit. While most consumers seem to understand the concept, additional guidance in the interpretation and application might be useful. However, as with any interpretation, the ICBA also recommends that a proposed definition be published to allow interested parties to provide comment.

Question 22. Technical Limits to Notifying Consumers that a Transaction May Exceed the Account Limit. Existing technology may not permit a creditor to alert a consumer when a particular transaction will exceed the credit limit on an account. While it is helpful to provide information to consumers about when an over-limit fee on an account will be assessed, the ICBA does not believe that it would be appropriate to establish a uniform format to explain when and how individual consumers may be allowed to exceed the established limit on an account. Permitting consumers to exceed the established limit on an account is an account feature that varies among different credit card products, and requiring a uniform disclosure format restricts this flexibility and limits product design.

Creditors also need sufficient flexibility to restrict credit card accounts, including when and how individual borrowers may be allowed to exceed the credit limit. Creditors should be allowed to have mechanisms in place to control the risks presented by different consumers. Technologies are rapidly evolving, especially in the payments arena, and creditors also need sufficient flexibility to adapt to these evolving technologies. In fact, restrictions, including those imposed by regulation or regulatory interpretation, may unnecessarily increase risks to creditors. Creditors should be permitted the flexibility to adjust account designs as technologies evolve without waiting for regulatory revision, especially since any regulation or regulatory interpretation takes time to revise and update.

However, while creditors should be allowed the flexibility to determine how to apply a fee, in the interests of transparency and consumer understanding, consumers should receive a brief explanation in account disclosure documents that explain how an over-limit fee operates. The ICBA agrees that creditors should briefly explain in the account agreement whether an over-limit transaction will be permitted. The account agreement should also disclose whether any fee for exceeding the credit limit will only be imposed once (as a result of the transaction that caused the credit limit to be exceeded) or will be imposed during each statement cycle that the outstanding balance on the account exceeds the credit limit on the account. Including such information in the account agreement helps inform consumers about what happens when a transaction causes the account limit to be exceeded and helps avoid confusion and misunderstanding about how the over-limit fee will be applied.

Questions 23 through 25. The Historical APR. One of the required disclosures on a customer's periodic statement is the "effective" or "historical" APR. That figure generally is calculated by including *all* finance charges imposed during the billing cycle. Consumer advocates believe that this is a key disclosure, possibly because of its "shock value" – especially for over-limit fees.

The ICBA does not believe that this is a particularly useful piece of information for consumers and that the Federal Reserve should eliminate it. Instead of the historical

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APR, most consumers focus on the simple interest rate and individual fees and charges on the periodic statement.[3] Because the calculation of the historical APR can be both costly and burdensome, the ICBA believes that the Federal Reserve should survey individual consumers to better gauge the usefulness of this information. And, the ICBA also believes that the Federal Reserve should meet with creditors and their software providers to determine the costs for providing this information. This is the type of disclosure that is particularly receptive to cost-benefit analysis, and the ICBA suspects that the Federal Reserve will find that the costs for providing the historical information generally exceed the benefit provided to a very small minority of consumers.

Rate Changes

Question 26. Generally, TILA requires a minimum of 15-days advance notice before the terms on an account are changed. However, there are instances when advance notice is not required. For example, the initial account agreement might specify that the rate will increase to the maximum if a payment is late. Then, when a payment is late, the rate automatically increases. The ICBA believes that the account opening disclosures and information provided in the account agreement are sufficient notice to consumers. More to the point, this is not a change in terms in the account agreement but an enforcement of the original terms of the agreement.

Question 27. Notice to Account Holders of Rate Changes. Generally, consumers are notified about applicable rates on an account as part of the original account agreement. If there is a change in rate, creditors use a variety of methods to notify consumers about the change in rates. Generally, though, the notice is accomplished through a special mailing or by means of an account statement stuffer.

Additional Information on Accounts

Question 28 through 30. Balance Calculation Methods. The Truth-in-Lending Act allows creditors to use a number of different ways to calculate the charges on the outstanding balance, but does not mandate which method to use. Depending on the timing of a transaction, payment cut-off times and dates, and the imposition of various fees and charges, the calculation of balance method can make a difference by affecting the calculation of the finance charge. For consumers that normally pay the outstanding balance on an account in full but miss a payment cut-off for some reason, e.g., oversight, the difference can be noticeable. However, the ICBA does not believe that there is any need to make revisions to these provisions of the regulation at this time.

While the ICBA believes there may be some intellectual appeal to permitting creditors to provide abbreviated information on periodic statements about how costs and fees are determined, the ICBA is also concerned that what is permissive easily could

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[3] Unfortunately, as evidenced by the need for constant reminders in educational materials on identity theft, many consumers fail to regularly reconcile their account statements. Therefore, the utility of the "shock value" in this information may actually be diminished substantially because those consumers that might benefit most by the "shock value" fail to actually review their account statements in a timely fashion.

become mandatory in a short period of time. Instead of trying to incorporate too much information – even in summary format – on the periodic statement, the ICBA recommends that consumers refer to the more complete information provided in their account agreement. There is an added benefit to reliance on the account agreement in that it encourages consumers to use and refer to the account agreement document and the disclosures in the account agreement for information about the operation of the account.

Second, attempting to provide sufficient information in "abbreviated" summaries on a periodic statement could cause misunderstandings because the information is not sufficiently comprehensive. Attempting to provide "summary" information on periodic statements also could result in overly lengthy periodic statements that become unwieldy and that result in obscuring the important information that should be disclosed on the periodic statement. Fundamentally, the ICBA believes that it is a mistake to attempt to provide this type of information on the periodic statement since it tries to force the periodic statement to perform functions outside and beyond its intended purpose. The periodic statement should be a listing of transactions and fees assessed during the statement cycle only.

Question 31. Impact of Minimum Payments. Over the past several years, consumer advocates have argued that creditors should be required to disclose the effect of making the minimum payment, including disclosing how long it would take to pay the balance if only the minimum payment is made. The ICBA has consistently stressed that providing this information would be costly and burdensome and yet would provide little meaningful information.

The ICBA continues to believe that it is not necessary to require creditors to provide a calculation showing the amount of time it would take to pay the outstanding balance on a credit card if only the minimum payment was made. First, it must be remembered that the minimum payment is a convenience for the consumer. Credit cards are open-end lines of credit, not installment loans. Second, the practicality of making the calculation would be expensive and burdensome for creditors, a cost that would increase the overall cost of credit for all consumers. Third, because credit cards are open-end and because transactions can be posted after the account statement is generated, the information about the effect of the minimum payment on the balance is likely to be outdated by the time the consumer receives the statement. Fourth, not all consumers limit their remittance to the minimum payment,[4] and so the calculation would not be informative for those consumers even though it would be costly to generate. If anything, a simple alert in the initial disclosures about the impact of making only minimum payments, possibly by a standard hypothetical example, should be sufficient.

Payment Allocation

Questions 34 through 36. Incoming payments may be applied to different portions of the outstanding amount due on a credit card account, and the application of payments can make a difference to the amount of total fees and charges that are imposed

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[4] Many consumers pay the outstanding balance on a credit card account in full each month and so the calculation would be completely irrelevant but would increase the costs that these consumers would have to pay for the credit card accounts.

during the statement cycle. For example, if a customer has $100 outstanding in purchases and $150 outstanding for cash advances, and there are different interest rates for each category of transaction, a payment of $100 that is applied solely to the cash advances instead of pro rata would make a difference in the finance charges.

Creditors use a variety of methods for applying payments to outstanding balances and charges. The ICBA believes that individual creditors should have flexibility and discretion in determining how to apply payments. In part, permitting creditors to determine how payments will be applied on a credit card account allows creditors to design particular credit card products in a way that may meet a specific need of a particular market niche.

However, the ICBA also agrees that it is appropriate for creditors to disclose how payments will be applied. This should be included in the initial account disclosures, with a brief explanation of the order in which a payment will be applied to different charges and fees on the account. This does not need to be a detailed explanation, but sufficient to disclose to the account holder how payments will be credited to the outstanding balance.

The ICBA does not believe that this information should be included on the periodic statement. As noted above, this disclosure goes beyond the function for which the periodic statement was intended. Adding a great number of abbreviated disclosures to the periodic statement adds to the cost of the periodic statement and also runs the risk of creating the kind of "information overload" on the periodic statement that obscures the important information that the periodic statement is intended to convey.

Tolerances

Question 37. Currently, although permissible tolerances are restricted by statute, the Federal Reserve does allow some tolerance for minor errors in calculation. For example, in a standard closed-end loan, an APR is considered accurate if within 1/8 of one percent of the calculations that are set forth in the rule. If the disclosure is within $100 on a mortgage loan, or within $10 for loans over $1,000, then it is considered within tolerance and the disclosure is deemed accurate. Because the calculations under Regulation Z can be quite complicated, and because some of the definitions are not always clear (e.g., the classification of certain fees as finance charges), the ICBA recommends that the Federal Reserve consider additional tolerances.[5] At the present time, we do not have any specific recommendations to make, but are willing to work with the Federal Reserve to consider where and at what level additional tolerances would be useful for creditors and consumers.

Other Information

Question 39. Special Disclosures. At this time, the ICBA is not aware of any particular types of credit card accounts that require special disclosures. Generally, the simpler the requirements for disclosures, the fewer opportunities there are for confusion and misinterpretation. For example, if a credit card were used to access a home equity line of credit, then the creditor would provide the basic disclosures for a home equity line

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[5] The ICBA recognizes that such changes may require legislative action.

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of credit along with the disclosures for a credit card account. For marketing purposes, the creditor will want to explain how the credit card feature is joined to the home equity line, but the basic requirements for the information that must be disclosed to the consumer are already in place.

Questions 40 through 42. The ICBA does not believe that there are any particular types of accounts or products or any specific class of borrowers that should be given special treatment, exemptions or waivers from the requirements of Regulation Z at this time.

Special Rules

Question 45. "Convenience Checks." Card issuers sometimes send account-holders "convenience checks" to use for purchases or balance transfers. At this time, the ICBA does not believe special disclosures are needed for "convenience checks." Generally, existing disclosures are sufficient to explain how "convenience checks" operate, including applicable rates and fees. If, however, the Federal Reserve determines that special disclosures may be necessary, then the ICBA recommends that the Federal Reserve meet with focus groups of consumers as well as industry representatives to assess the disclosures and that any proposed special disclosures be published for public comment.

Question 46. Additional Cards. Generally, card issuers may only send a card when requested or as a replacement for an existing card. However, because companies have been issuing new cards in different shapes and sizes, the Federal Reserve allows more than one replacement card to be sent under limited circumstances. The ICBA believes that, because the Federal Reserve very recently considered this issue and provided guidance for card issuers, there currently is no reason to revisit the issue.

Payments

Questions 47 through 51. Consumer advocates have raised concerns about how creditors determine the time of day before which payment must be received to be considered received that day. In part, this issue has arisen with the increased imposition of late fees. Creditors use a variety of cut-off hours for posting payments and this allows creditors a level of flexibility that the ICBA finds appropriate.

Currently, 12 CFR 226.10 requires creditors to promptly credit payments as received. While some companies operate 24/7, smaller credit card issuers and service-providers do not have the capability of operating around the clock. However, the existing rule is sufficient to cover both types of operations, and special rules are unnecessary.

Conclusion

The ICBA commends the Federal Reserve for undertaking this review of credit card accounts and the disclosures and consumer protections under Regulation Z and TILA. At the outset, though, it is important to recognize that many of these rules and requirements have been in place for many years and have been reviewed and interpreted not only by the Federal Reserve, but also by a variety of courts around the country. This is a factor that the ICBA strongly urges the Federal Reserve to keep in mind since changes to the regulation can also affect established judicial precedent. Second, the ICBA strongly recommends that the Federal Reserve work closely with consumer focus groups to assess existing disclosures; determine what information is truly meaningful and useful; evaluate how best to communicate information; and to eliminate "information overload." And finally, the ICBA urges the Federal Reserve to consult with industry representatives and software vendors to accurately assess costs so that a proper balancing of costs-and-benefits can be achieved.

The ICBA looks forward to working with the Federal Reserve and other interested parties on this project as it moves forward. If you have any questions or need any additional information, please contact me by telephone at 202-659-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,

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